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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5840 of 2007

Sudhakar T. Bidkar .. Petitioner

versus

Lajwanti D. Hiramani .. Respondent

...

Mr.S.D. Thokade for the petitioner.

CORAM : D.G.KARNIK, J

DATED : 26th October 2007

P.C.:

1. Heard learned counsel for the petitioner.

2. By this petition, the petitioner challenges the order dated 2nd July 2007 passed by the District Judge, Pune rejecting the petitioner's application made in appeal for amendment of the plaint.

3. The petitioner who is the original plaintiff in the suit had filed an application at Exh.43 in the trial court for amendment of the plaint. That

application was rejected by the trial court. That order was challenged by the plaintff by filing Writ Petition no.4831 of 2006. However before the Writ Petition could be heard the suit itself was heard and the trial court dismissed the suit on merits. The Writ Petition was therefore disposed of as infructuous.

4. The petitioner thereafter challenged the dismissal of the suit before the District Court, Pune by filing Civil Appeal no.641 of 2006. In the appeal, petitioner again made an application for the very same amendment of the plaint. The appellate court held that the application for the very same amendment on the very same grounds was not maintainable. I see no error in the conclusion of the District Judge that application for the very same amendment could not be made for the second time and the same is barred by res judicata. There is no error in the impugned order.

5. At this stage, learned counsel for the petitioner invited my attention to ground no.13 taken by the petitioner in the memo of appeal in Civil Appeal no. 641 of 2006. In the said appeal the petitioner while challenging the final decision of the suit has also challenged the order passed by the

trial court below Exhibit-43 rejecting the application for amendment.

6. It is settled principle of law that while challenging the final judgement and decree, the aggrieved party can challenge all interlocutory orders passed in the proceeding which are not challenged earlier. In the present case though the order rejecting the application for amendment was challenged by filing a writ petition that was disposed of not on merits but as infructuous as the suit itself was decided. In effect there was no challenge to the order of the trial court rejecting the amendment application. In the circumstances, the appellate court while hearing the appeal on merits shall also be entitled to consider the said ground no.13 about the alleged improper rejection of the application for amendment by the trial court.

7. With these observations, Writ Petition is rejected summarily.

(D.G. KARNIK, J)